

SCHEDULE 2

Amendments to the Financial Services Act 1986 and minor and consequential amendments and repeals

PART I

Amendments to part IV of the Financial Services Act 1986

- 1.—(1) Section 142 of the Act shall be amended as follows.
- (2) In subsection (7), immediately before the definition of “issuer” there shall be inserted—
- ““approved exchange” means, in relation to dealings in securities, a recognised investment exchange approved by the Treasury for the purposes of the Public Offers of Securities Regulations 1995 either generally or in relation to such dealings;”.
- (3) After that subsection, there shall be inserted—
- “(7A) For the purposes of this Part of this Act—”
- (a) a person offers securities if, as principal—
- (i) he makes an offer which, if accepted, would give rise to a contract for their issue or sale (which for this purpose includes any disposal for valuable consideration) by him or by another person with whom he has made arrangements for their issue or sale; or
- (ii) he invites a person to make such an offer,
- but not otherwise; and, except where the context otherwise requires, “offer” and “offeror” shall be construed accordingly; and
- (b) whether a person offers securities to the public in the United Kingdom shall be determined in accordance with Schedule 11A to this Act.
- 2.—(1) In section 144 of the Act, for subsection (2) there shall be substituted—
- “(2) Listing rules shall require as a condition of the admission to the Official List of any securities for which application for admission has been made and which are to be offered to the public in the United Kingdom for the first time before admission—
- (a) the submission to, and approval by, the authority of a prospectus in such form and containing such information as may be specified in the rules; and
- (b) the publication of that prospectus.
- (2A) Listing rules may require as a condition of the admission to the Official List of any other securities—
- (a) the submission to, and approval by, the authority of a document (in this Act referred to as “listing particulars”) in such forms and containing such information as may be specified in the rules; and
- (b) the publication of that document;
- or, in such cases as may be specified by the rules, the publication of a document other than listing particulars or a prospectus.
- (2B) Subsections (2) and (2A) have effect without prejudice to the generality of the power of the competent authority to make listing rules for the purposes of this section.”.
- (2) Schedule 3 to these Regulations shall have effect to insert Schedule 11A into the Act.
- (3) After section 154 of the Act there shall be inserted—

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“Application of Part IV to prospectuses.

154A. Sections 146 to 152 and 154 above shall apply in relation to a prospectus required by listing rules in accordance with section 144(2) above as they apply in relation to listing particulars, but as if—

- (a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus; and
 - (b) notwithstanding section 142(7) above, any reference in section 152 above (other than in subsection (1)(b) of that section) to the issuer of securities included a reference to the person offering or proposing to offer them.”.
- (4) After section 156 of the Act there shall be inserted—

“Approval of prospectus where no application for listing.

156A.—(1) Listing rules may also provide for a prospectus to be submitted to and approved by the competent authority where—

- (a) securities are to be offered to the public in the United Kingdom for the first time;
 - (b) no application for listing of the securities has been made under this Part of this Act; and
 - (c) the prospectus is submitted by or with the consent of the issuer of the securities.
- (2) Listing rules made under subsection (1) above may make provision—
- (a) as to the information to be contained in, and the form of, a prospectus submitted under any such rules; and
 - (b) subject to the provisions of the Public Offers of Securities Regulations 1995, as to the timing and manner of publication of such a prospectus.
- (3) Sections 146 to 152 and 154 above shall apply in relation to such a prospectus as they apply in relation to listing particulars but as if—
- (a) any reference to listing particulars were a reference to a prospectus and any reference to supplementary listing particulars were a reference to a supplementary prospectus;
 - (b) in section 146(1) above—
 - (i) the words “as a condition of the admission of any securities to the Official List” were omitted; and
 - (ii) for the words “section 144 above” there were substituted “section 156A(1) below”;
 - (c) in section 147(1) above, for the words “under section 144 above and before the commencement of dealings in the securities following their admission to the Official List” there were substituted “under section 156A(1) below and before the end of the period during which the offer to which the prospectus relates remains open”;
 - (d) in subsections (1)(d) and (2)(d) of section 151 above—
 - (i) the words “that he continued in that belief until after the commencement of dealings in the securities following their admission to the Official List and” were omitted; and
 - (ii) the words “and, if the securities are dealt in on an approved exchange, that he continued in that belief until after the commencement of dealings in the securities on that exchange” were added at the end;

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- (e) notwithstanding section 142(7) above, any reference in section 152 above (other than in subsection (1)(b) of that section) to the issuer of securities included a reference to the person offering or proposing to offer them; and
 - (f) in section 154(1) above, for the words “Where listing particulars are or are to be published in connection with an application for the listing of any securities” there were substituted “Where a prospectus is or is to be published in connection with an application for approval, then, until the end of the period during which the offer to which the prospectus relates remains open,”.
- (4) Listing rules made under this section may require the payment of fees to the competent authority in respect of a prospectus submitted for approval under the rules.

Publication of prospectus.

156B.—(1) Where listing rules made under section 144(2) above require the publication of a prospectus, it shall not be lawful, before the time of publication of the prospectus, to offer the securities in question to the public in the United Kingdom.

(2) An authorised person who contravenes subsection (1) above shall be treated as contravening rules made under Chapter V of Part I of this Act or, in the case of a person who is an authorised person by virtue of his membership of a recognised self-regulating organisation or certification by a recognised professional body, the rules of that organisation or body.

(3) A person, other than an authorised person, who contravenes subsection (1) above shall be guilty of an offence and liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months or a fine not exceeding level 5 on the standard scale.

(4) Without prejudice to any liability under section 150 above, a person shall not be regarded as contravening subsection (1) above by reason only of a prospectus not having fully complied with the requirements of listing rules as to its form or content.

(5) Any contravention of subsection (1) above shall be actionable at the suit of a person who suffers loss as a result of the contravention subject to the defences and other incidents applying to actions for breach of statutory duty.”

3. Subsection (3) of section 156B of the Act shall not apply to a European institution carrying on home-regulated investment business in the United Kingdom which contravenes subsection (1) of that section, but it shall be treated for all purposes—

- (a) if it is not a member of a recognised self-regulating organisation, as having contravened rules made under Chapter V of Part I of the Act; or
- (b) if it is a member of a recognised self-regulating organisation, as having contravened the rules of that organisation